IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

(Civ.# B 038 975)
(Superior Court # C 420 153)

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

and

MARY SUE HUBBARD,

Appellants,

-against-

GERALD ARMSTRONG,

Defendant.

BENT CORYDON,

Respondent

APPEAL FROM SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
JUDGE BRUCE R. GEERNAERT

DEFENDANT'S BRIEF

GERALD ARMSTRONG
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TABLE OF CONTENTS

INTRODUCTION

The history of this case is contained in appellants' and respondent Bent Corydon's briefs and the briefs filed in Church of Scientology of California v. Armstrong, Civ. No. B025920; LASC No. C420153, also now before the Court. Defendant Gerald Armstrong filed a "Petition For Permission To File Response" in the instant appeal on March 1, 1990. In support of his petition defendant filed a document entitled "Mutual Release of All Claims and Settlement Agreement," referred to herein as the "settlement agreement," which defendant and appellants had signed in December 1986 in partial settlement of the underlying case. Appellants filed an opposition to defendant's petition on March 6, and defendant filed a reply memorandum on March 23. Defendant supported his reply with a declaration executed March 15 (3-15-90 Dec.) detailing his involvement with appellants in various lawsuits since the settlement. Defendant has filed a declaration executed December 25, 1990 and the exhibits thereto as defendant's appendix (DA) to defendant's response brief. The declaration contains defendant's account of the circumstances at the time of the signing of the settlement agreement, a rebuttal of appellants' challenge to facts in the March 15 declaration, and a statement of defendant's interest in the outcome of this appeal.

The question presented in this appeal is whether the Los Angeles Superior Court's Armstrong file, which had remained sealed from December 11, 1986 when Judge Paul G. Breckenridge, Jr. agreed to its sealing pursuant to stipulation, until November 9, 1988 when respondent Bent Corydon on motion to Judge Bruce R. Geernaert, heir to the case following Judge Breckenridge's retirement, was granted access to view and copy the file

contents, should be unsealed or resealed. Defendant asks that the file be unsealed once and for all and for ever.

Appellants contend that the Armstrong file should be sealed to protect their "strong confidentiality and privacy interests," and because they "relied upon the sealing in settling the underlying litigation," Appellants' Reply Brief (ARB) at 1. They also argue that there are "no countervailing interests to justify unsealing of the file," ARB at 15.

Defendant contends that appellants have lost whatever privacy right they may have at one time had through their own actions, that the sealing was not "[a]n integral, indispensable part of [the] settlement," Appellants' Brief (AB)at 4, and appellants did not rely upon it in settling the litigation. Defendant, moreover, asserts private and public interests which provide sufficient grounds for unsealing the court file.

ARGUMENT

Appellants have no private materials in the court file

In September 1982 in the underlying case defendant's attorneys delivered to the Clerk of the Los Angeles Superior Court a set of documents (Armstrong documents) they had received from defendant for use in his defense of anticipated legal conflicts with appellant organization. The Armstrong documents remained under seal, except for very brief periods when the sealing order was temporarily lifted, until appellants obtained possession of them following the December 1986 partial settlement. Five documents and two audio cassettes from the Armstrong documents remain with the Clerk of the Superior Court and are subject to the rulings in United States v. Zolin, 109 S. Ct. 2619 (1989) and in the Ninth Circuit Court of Appeals opinion on remand from the US Supreme Court reported at 90 Daily

Appellate Report 6890 (June 21, 1990). At the 1984 conversion trial some of the Armstrong documents were admitted into evidence and unsealed, and became part of the court file, although they were never made available to the public. The Armstrong documents which were admitted into evidence were identified by defendant during his trial testimony and portions of some of these documents were read into the record.

During the conversion trial a great number of non-Armstrong documents were also entered into evidence by plaintiffs and defendant. These were not sealed and were available to the public. Immediately following the trial defendant provided all these exhibits to an individual with a photocopy service who had requested them, and they were copied and widely distributed. The trial transcript was never sealed until Judge Breckenridge's December 11, 1986 order pursuant to stipulation and it was copied and widely distributed. Appellants have known since 1984 of the distribution of the trial transcript, 3-15-90 Dec., Ex. K, p. 6.

During its consideration of appellants' original appeal from the decision in the conversion trial, Civ. No. B 005912, the Court of Appeal requested and received from the lower court some fifty trial exhibits including Armstrong documents. Following the court's dismissal of that appeal in January 1987 appellants also obtained all these documents from the court file.

Thus all that remains in the LA Superior Court Armstrong file from the conversion case are a few pleadings, the lower court's various rulings, the trial transcript and the court's decision, all of which are public documents. There are in the file no papers of appellants which in jurisprudential terms can sensibly be considered private.

Any other documents in the court file relate to defendant's counterclaim which was bifurcated from the conversion suit on motion of plaintiffs/appellants in June 1983. Although they "successfully" argued in 1983 that the issues and facts in their case against defendant and those of his counterclaim were unrelated, they now suggest that everything in the court file concerned their effort "to recoup and maintain the confidentiality of stolen materials", ARB at 2.1/ In fact the voluminous counterclaim materials in the court file detail years of appellant organization's attacks on defendant, invasions of his privacy, obstruction of justice, intelligence operations, attempted entrapment, false sworn testimony and false criminal charges pursuant to appellants' policy of "fair game," DA at 15-18, 128-388.2/ Since appellants performed these acts publicly they cannot now legitimately assert a right of privacy in them.

1/ There were no stolen materials. Appellants use of terms such as "stolen" and "theft" in their description of actions taken by defendant with the Armstrong documents is pursuant to "black propaganda" techniques, see e.g., DA at 188, 379. As Judge Breckenridge stated in the Memorandum of Intended Decision, defendant "had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk."

2/ Appellant organization's policy of "fair game" has been criticized by the California Court of Appeal in Wollersheim v. Church of Scientology of California (1989) 212 Cal. App. 3rd 872, 260 Cal. Rptr. 331 and Allard v. Church of Scientology of California (1976) 58 Cal. App. 3rd 439, 129 Cal. Rptr. 797 and by various other courts in various jurisdictions. The best statement of "fair game" giving the best understanding of its philosphy, policy and activity known to defendant is the Armstrong case file.

Appellants have chosen to forfeit their meager privacy rights to pursue other legal benefits

There is very little truth in appellants' assertion that they "here made every effort to vindicate their privacy interests without doing them further damage," AB at 15. Their actions in this case, in courts in other jurisdictions regarding this case, and extralegally regarding defendant have lost them whatever rights they may have at one time had.

Attorneys for appellants and defendant gave no clue to Judge Breckenridge at the December 11, 1986 hearing that the settlement agreement and sealing order were intended to be one-sided. It is unthinkable that he would have agreed to such a concept; that appellants were free to say anything about defendant and the file contents and use any document from the sealed file for any purpose including attacks on defendant and other persons in other litigation without defendant being able to respond and without the other litigants having use of the same "sealed" evidence. Indeed appellants maintained in this case and in other cases as it suited their purposes the bluff that the settlement agreement conditions were reciprocal. Appellant organization states, for example, in its motion of November 1, 1989 to prevent respondent Corydon from taking defendant's deposition in the case of Corydon v. Church of Scientology International, Inc., LASC No. C694401, that [o]ne of the key ingredients to completing these settlements, insisted upon by all parties involved,(emphasis in original) was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners," (3-15-90 Dec. Ex. D, p. 4).

Following defendant's filing of the March 15 declaration, however, and in response to his allegations therein of appellant organization's violations of the "reciprocal" conditions of the settlement agreement, including use of exhibits and information from the "sealed" Armstrong file, (3-15-90 Dec. para. 25, Exs. F-K), appellant organization called off the bluff and laid down its real, albeit losing, hand. Again in Corydon, in a declaration in support of an opposition to a motion for an order directing non-interference with witnesses appellant organization representative Kenneth Long states that "[t]here is no provision in the settlement agreement with Armstrong which would prohibit CSC from using information obtained through litigation with Armstrong in seeking legal remedies for wrongs committed by third parties," DA at 9, 93-95.3/ Although it is true that the settlement agreement does not specifically prohibit such acts by appellant organization, it also does not specifically permit them. The settlement agreement, moreover, contains a specific release of appellants by defendant "of and from all claims....and all demands, damages, actions and causes of action of every kind and nature, known or unknown....from the beginning of time to and including the date hereof" (emphasis added), DA at 21. Defendant did not contract to be a punching bag for appellants and did not and could not release them from future acts Having misused the Armstrong materials from the underlying case they must be denied the benefit of its being sealed and its contents concealed from the rest of the world.4/

3/ Appellant organization attorney Lawrence Heller states in a declaration filed in support of the same opposition that "[a]n important part of the Armstrong settlement was that the Church was not bound by the same confidentiality provisions as Armstrong and that the Church parties remain free to comment upon and use information pertaining to Mr. Armstrong's

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experiences in the Church of Scientology. At the time of the Armstrong settlement, information from Mr. Armstrong was being used in a number of cases around the world. It was important to the Church parties to the Armstrong settlement that they remain free to defend themselves against allegations supported by information originating with Armstrong prior to the settlement." DA at 8,9, 89,90. Mr. Heller, in fact, presents a strong argument for the unsealing of the Armstrong court file, since, in the interest of justice, the litigants in the cases around the world should also be able to defend themselves "against allegations supported by information originating with Armstrong."

4/ Appellant organization did not, however, merely use information obtained through the Armstrong litigation in seeking legal remedies for wrongs committed by third parties. It itself committed wrongs with this use, against the third parties, defendant and the courts. The affidavits executed by Kenneth Long and filed in 1987 in the case of Church of Scientology of California v. Russell Miller & Penguin Books Limited in the High Court of Justice in London, England, Case No. 6140, are glaring examples of appellant organization's misuse of information from Armstrong. Mr. Long falsely accused defendant of perjury, violations of the Armstrong sealing orders and violations of "orders issued by judges at all levels ranging from the Los Angeles Superior Court to the Supreme Court of the United States," DA at 10,11,93-95; 3-15-90 Dec. paras. 21-39, Exs. F-K. Mr. Long avers moreover that his false accusations "were required to detail the elements of the breach of confidence claim against Miller and Penguin, and the claim could not have been brought without explaining the underlying actions taken by Armstrong," DA at 11,94,95. Defendant's refutation of the Long accusations is contained in his 12-25-90 Declaration, DA at 13,14. Mr. Long did not stop, however, with charges of sealing order violations, but libeled defendant as "an admitted agent provocateur of the U.S. Federal Government who planned to plant forged documents in Church files which would then be 'found' by Federal officials in subsequent investigation as evidence of criminal activity," 3-15-90 Dec. Ex. H, p.4.

It is also jurisprudentially illogical that appellants conceal the Armstrong file contents from the rest of the world while at the same time they prosecute an appeal of the trial court's decision in the conversion case. Not only do they quote extensively in their appellate briefs from the trial transcript, which, as they state, contains portions of the Armstrong documents that had been read into the record, but they acknowledge the non-private nature of the transcript and the court file by the very act of appealing, since the Court of Appeal has access to the transcript and file and could if it wished publish them in their entirety . It is also well within the power of the Court of Appeal to, as stated by defendant's attorney at the December 11, 1986 hearing, "simply request whatever exhibits it wants from the appellant." By pursuing legal solutions in public courts appellants must expect disclosure and cannot expect the courts to alter their rules, procedures and policies favoring maximum public access to assist appellants in their pursuit of concealment and secrecy.

Sealing the court file was not an integral, indispensable part of the settlement

It is utterly impossible that, as appellants insist, the sealing of the Armstrong file was essential to the partial settlement of the case. It is possible that defendant's agreement to stipulate to the sealing of the case was considered by appellants to be essential to the settlement, but sealing was not within defendant's power and could not have been bargained for.

There is not one word in the settlement agreement about sealing the court file. There is, however, a paragraph which reads: "The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) (parens in original) acknowledge that they have not made any

statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party)" (parens in original), DA at 14,15. Defendant contends that he was never told that if Judge Breckenridge refused to seal the court file (which was well within his authority to do) the settlement defendant had agreed to five days prior to the December 11 hearing was cancelled.

There is also no mention to Judge Breckenridge by any attorney for any party at the December 11 hearing that should he not agree to the stipulated sealing of the file the settlement would be cancelled. Or, as appellant Mary Sue Hubbard's attorney stated at the November 9, 1988 hearing before Judge Geernaert, "there would have been no settlement at all in this case had there not been the agreement to seal the documents."

Appellants state at page 19 of their opening brief that "...parties to the lawsuit reached a partial settlement of the case -- which included a monetary settlement of Armstrong's cross-complaint for money damages -- in reliance on the order sealing the file. For the court to induce the settlement by entering the sealing order and now decline to enforce that order works a serious injustice on the plaintiffs." Appellants have things backwards. The "settlement" occurred prior to the December 11 hearing, and Judge Breckenridge relied on the averments of attorneys for the parties that there had been a settlement before he ordered the sealing of the file. Judge Breckenridge did not induce the settlement; the parties' attorneys induced his agreement to sign the stipulated order, by omitting material facts

concerning the settlement agreement and their plan to use the agreement to obstruct justice.

The public has an interest in
the court file being unsealed.

As appellants lament, information originating from the Armstrong file, including the trial court's decision is being used by litigants against appellant organization around the world. /5 Testimony from the Armstrong trial and the decision have been quoted and used in articles and books published internationally. /6 The trial transcript and non-Armstrong documents trial exhibits have been circulated broadly as noted by appellants, 3-15-90 Dec. Ex. K. Defendant has been deposed in Corydon, supra for two days by plaintiff and will in the near future be deposed by defendant organization in the case pursuant to their subpoena, DA at 98-103. There is an overwhelming public interest in defendant's history in and knowledge of appellant organization and the contents of the Armstrong court file.

5/ Bent Corydon, respondent in this appeal, has survived considerable opposition and gone to a great amount of effort to obtain access to the contents of the file. It is defendant's understanding that at least one newspaper, the St. Petersburg Times, is in the process of attempting to gain access to the file. Larry Wollersheim, respondent in the US Supreme Court in the case of Church of Scientology of California v. Wollersheim, No. 89-1361, has written in an appendix to a supplemental brief dated November 16, 1990 and filed with the Court that the Armstrong case "contains information vital to any investigation attempting an informed evaluation of L. Ron Hubbard's mental state and the intentions and accuracy of [Wollersheims's] preceding statements (concerning what he called Scientology's "core nature"). Against Scientology's resistence, Mr. Armstrong is currently involved on appeal, in getting these critical documents re-opened to the public." . The issue of whether "contractual releases (containing obstruction and silence provisions of the same type and nature as the Armstrong settlement agreement) whose objects are suppression of evidence of discreditable facts

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The conversion case half of the court file contains the best public record of the life and lies of L. Ron Hubbard. It contains all that is left of the evidence which Judge Breckenridge relied on to conclude that Mr. Hubbard was "a man who has been virtually a pathological liar when it comes to his his history, background and achievements." And it contains what is left of the evidence which the judge concluded "reflect[ed] [Mr. Hubbard's] egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile," Armstrong decision at 9. Since appellant organization continues to publicize the history, achievements and promises of L. Ron Hubbard in its promotion to the public, the court file should be available to the public.

The cross-complaint half of the court file contains the best available record of appellant organization's anti-social and criminal acts to silence and destroy defendant. It is an impeccably documented story of appellant organization's policy of fair game (which defendant describes as a philosophy of opportunistic hatred, DA at 15) directed at one individual for no other reason than that he said L. Ron Hubbard lied.

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and the suppression of evidence of criminal conduct constitute an obstruction of justice, and, if so, are said releases illegal and void?" is now before the Ninth Circuit Court of Appeals in the case of Vicki and Richard Aznaran v. Church of Scientology of California, et al. No. 90-55288.

6/ Major books which deal extensively with the Armstrong litigation include L. Ron Hubbard, Messiah or Madman (1987) by Bent Corydon and Ronald De Wolf, Bare-Faced Messiah (1987) by Russell Miller and A Piece of Blue Sky (1990) by Jon Atack.

It is the cross-complaint materials, really, mostly filed after the trial that this case is ultimately about. The fact that L. Ron Hubbard lied is not remarkable. Everyone has lied. The case is about how he and now his organization deals with that fact. They considered that the solution to their problem of being exposed as liars lay in fair game. So appellant organization did not stop with its founder's lies about his past, credentials and the efficacy of its therapy. When these lies were uncovered by defendant, they lied about him,7/ mounted intelligence operations against him, 8/ and psychologically and physically terrorized him.9/

7/ See, e.g., references to documents within the Armstrong file but not at present in the possession of defendant: "Freedom" tabloid of May 1985 in which defendant is described as "an informant who has been well indoctrinated in the techniques of psychological warfare in modern dress,"The Oregonian newspaper of May 30, 1985, DA at 161. Even following the settlement appellant organization continued to lie about defendant, calling him, inter alia, "an admitted agent provocateur of the U.S. Federal Government," 3-15-90 Dec. Ex. H; "a former staff member who had stolen valuable documents from Church archives," the source of "numerous false claims and lies," and part of "a small cabal of thieves, perjurers and disreputable sources," 3-15-90 Dec. Ex. E.

8/ Defendant describes what appellant organization called the "Armstrong Operation" as "an operation over almost 6 years involving dozens of people, incredible expenditures of money for extra-legal actions, a bevy or PIs, three countries, illegal videotapes, bugs, a paid-off dirty cop, millions of "Freedom" tabloids devoted to the operation distributed internationally, manufactured evidence foisted on the LAPD, LA DA, Courts and the FBI, and a get-rich-quick scheme involving millions of dollars internationally," DA at 132.

9/ In the appendix to his decision Judge Breckenridge wrote that "[a]fter the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these

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The Armstrong court file also contains the best proof and the most egregious example known to defendant of appellant organization's violations of the "sanctity" of statements made by its clients and staff members during supposedly confidential therapy (auditing) sessions. Since appellant organization maintains that the information divulged in auditing, recorded and stored in confessional folders is confidential and privileged, DA at 350, and since everyone who becomes a client or employee of appellant organization undergoes auditing, there is a great public interest in the proof of violations of confidentiality contained in the court file. This proof should be available to anyone considering undergoing auditing from appellant organization, and anyone currently involved with the organization in any capacity. Appellant organization does not honor the sanctity of information divulged in auditing and will use that information covertly, overtly and opportunistically. Appellant organization not only extracted defendant's statements from his auditing folders of incidents in his life which were unchaste or embarrassing and placed them before Judge Breckenridge, it added incidents which never happened, DA at 294. Defendant's knowledge of appellant organization's auditing sanctity violations and its use of his

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individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances and upset his neighbors," Appendix to Decision, p. 14,15. Appellant organization attempted at least three times to bring false criminal charges against defendant, DA at 135,159, 163, 259-271 and several times to have defendant sanctioned for manufactured violations of court orders. Appellant organization continued its practice of psychological terror following the settlement, threatening defendant with lawsuits, libeling him, accusing him falsely of more court order violations, and making a mockery of the settlement.

statements against him is detailed in his declaration of November 1, 1986 and the exhibits thereto appended as Exhibit P to his 12-25-90 declaration, DA at 289-374.

The Armstrong file also contains overwhelming evidence of appellant organization's abuse of process and obstruction of justice, which fact alone warrants the file's unsealing. It is clear now that the sealing itself is an obstruction of justice which should be remedied. The file contents demonstrate unequivocally that appellant organization refused to comply with the court's discovery orders, manufactured evidence and filed false sworn statements, DA at 128-288. The file will reveal personal and unwarranted attacks on Judge Breckenridge and on defendant's lawyers, DA 159,160,187-201. Vicki J. Aznaran stated at para. 12 of her declaration dated 9 August 1988, filed in this appeal as an exhibit to Bent Corydon's "Response to Petition For Writ of Supersedeas," that during the course of [the Armstrong] litigation I was ordered to go through Armstrong's [auditing] folders and destroy or conceal anything that might be damaging to Scientology or helpful to Armstrong's case. As ordered, I went through the files and destroyed contents that might support Armstrong's claims against Scientology. This practice is known within Scientology as "culling PC folders" and is a common litigation tactic employed by Scientology."

Defendant has a personal interest
in the court file being unsealed

Appellants have attacked defendant's credibility and character since the December 1986 settlement. They have falsely accused him of violations of the order sealing the Armstrong court file, while they have themselves violated it. Part of the truth lies in the file and should not be concealed so

that appellants can continue to misstate what it is. Defendant believes he would be a party to obstruction of justice if he did not attempt to have the file unsealed.

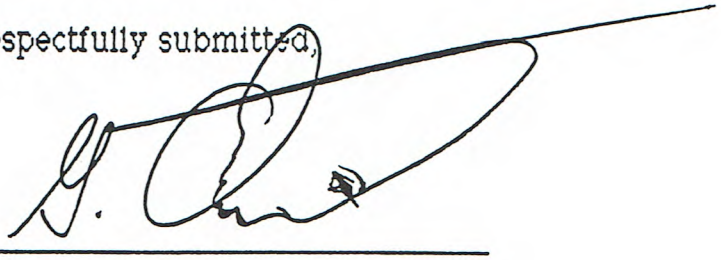
Defendant stated his personal interest in the unsealing in his 12-25-90 declaration: "It is my opinion that full disclosure, including the unsealing of the Armstrong file and the publication of this and my other declarations, will not harm the organization in the least. It is my opinion that full disclosure will relieve the organization of the burden of concealing its fair game philosophy and its past, and relieve it of its unfounded fear of what disclosure might portend. And disclosure will eliminate possible further fair game acts to prevent disclosure," DA at 18.

CONCLUSION

The Armstrong court file should be unsealed once and for all and for ever.

Dated: Sleepy Hollow, California
December 28, 1990

Respectfully submitted,



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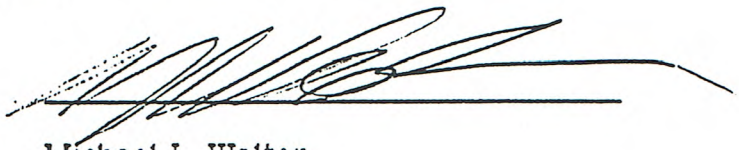
PROOF OF SERVICE BY MAIL

I am a resident of the County of Marin, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is PO Box 751, San Anselmo, CA 94960.

On December 28,1990 I caused to be served the within DEFENDANT'S BRIEF and DEFENDANT'S APPENDIX on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Fairfax California, addressed to the persons and addresses specified on the service list attached.

Executed on December 28, 1990 at San Anselmo, California.

I declare that the foregoing is true and correct.



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SERVICE LIST
(Defendant's Brief and Defendant's Appendix)

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Original and four copies of brief and one copy of defendant's appendix to the Court of Appeal.

Four copies of brief and one copy of appendix to the Supreme Court of California.